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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 601

J. D. LEWIS and ZELMA W. LEWIS,
Petitioners,

VERSUS

SPENCER CARVER, TRUSTEE,
Respondent.

PETITION FOR REHEARING ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

JOHN B. OGDEN,
1408-9 Liberty Bank Building,
Oklahoma City, Oklahoma,
Attorney for Petitioners.

January, 1957.

LITTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. FO 8-8780

INDEX

	PAGE
Petition for Rehearing	1
Rules of Civil Procedure, Rule 38	2
Brief in Support of Petition	4
Conclusion	5
Certificate of Counsel	5
Certificate of Service	6

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PETITION FOR REHEARING

Come now the above named petitioners and show to this Honorable Court that on the 21st day of January, 1957, this Court denied the petitioners' petition for Writ of Certiorari in this case and declined to assume original jurisdiction.

These petitioners now show to this Honorable Court that they believe a rehearing should be granted and the Writ should be issued, and the cause be reviewed and determined by this Court for the following reasons, namely:

(1) One of the questions presented is whether or not a United States Trial Judge can deny a litigant a right to a trial by jury in violation of his constitutional rights as guaranteed under Amendment Seven of the Constitution of the United States and Rule 38, Rules of Civil Procedure.

(2) Whether or not a United States Court can take away from a State Court jurisdiction to try the same case between the same parties, involving the same *res*, when the State Court had first acquired jurisdiction.

These petitioners now most respectfully show to this Honorable Court that they believe this Court should determine whether or not a United States District Judge has the right to deny a litigant a jury trial in a civil action in violation of Amendment Seven to the Constitution of the United States and Rule 38, Rules of Civil Procedure, and these petitioners now show to this Honorable Court that their rights as citizens have been denied to them by virtue of the fact that they were denied a jury trial after due demand in a cause wherein under the Constitution of the United States and the Rules of Civil Procedure heretofore mentioned provided for a jury trial.

This appeal also presents the question of a United States District Court taking jurisdiction over a case then pending in a State District Court involving the same *res* and the same parties which these petitioners believe should be decided in this Court in this case.

These petitioners further show to this Honorable Court that all of the questions herein presented are important legal questions and that so far as your petitioners know, the

question raised with reference to the denial of a jury trial has not been passed upon by this Court and neither has the question of whether or not the petitioners had the right to appeal from an order denying their motion to vacate a void judgment been decided by this Court.

These petitioners therefore most respectfully request this Court to grant a rehearing in this cause and reconsider the questions thus presented, and to issue the Writ as prayed for.

John B. Ogden

JOHN B. OGDEN,
1408-9 Liberty Bank Building,
Oklahoma City, Oklahoma,
Attorney for Petitioners.

BRIEF IN SUPPORT OF PETITION

Without restating the matters and things set forth in the original brief on file in this Court, we wish to simply state in our brief that we feel that surely the petitioners here are entitled to have this Court determine whether or not the denial of a jury trial as provided by the Constitution of the United States and Rules of Civil Procedure constitute a denial of due process of law, and what effect this has upon a judgment rendered in violation of the Constitution and the Rules. It will be noted that the petitioners here have presented this matter to the United States Court of Appeals Fifth Circuit and the United States Court of Appeals Tenth Circuit and up to now have obtained no relief whatsoever.

It will be noted from the record before this Court that the United States District Court for the Northern District of Texas presided over by the Honorable William H. Atwell simply took this case involving the same *res*, that is real property, from the State Court, denied a jury trial and rendered judgment. We feel that this Court should not permit the Federal Courts to usurp the powers of the State Court and take away from the State Court jurisdiction which it had acquired and deny a jury trial in violation of the Constitution and there be left for the petitioners no relief whatsoever. These are the undisputed record facts in this case. The authorities cited in the brief are abundant and we will not restate them here. We feel that the judgment is absolutely void and that this Court should assume jurisdiction herein and determine the validity of the judgment complained of.

It would appear that a citizen should not be driven into the bankruptcy courts simply because he has been denied his rights as a citizen of the United States under the Constitution and the laws of this Republic.

CONCLUSION

May we therefore most respectfully urge this Court to vacate its order denying certiorari and grant the writ and determine the case on the admitted facts in the record herein.

Respectfully submitted,

John B. Ogden

JOHN B. OGDEN,
1408-9 Liberty Bank Building,
Oklahoma City, Oklahoma,
Attorney for Petitioners.

January, 1957.

CERTIFICATE OF COUNSEL

I hereby certify that this Petition for Rehearing filed herein is filed and presented in good faith and not for the purpose of delay, and in order that substantial justice may be done.

John B. Ogden

JOHN B. OGDEN

CERTIFICATE OF SERVICE

I certify that I mailed a true and correct copy of this Petition for Rehearing and Brief in Support Thereof to Spencer Carver, c/o Biggers, Baker, Lloyd & Carver, attorneys for respondent, 2020 Republic National Bank Building, Dallas, Texas, by depositing the same in the United States Mail with sufficient postage attached.

John B. Ogden

JOHN B. OGDEN